

STATE OF MICHIGAN  
COURT OF APPEALS

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HOREYA HUSSEIN, a minor by her Next Friend,  
SAFEYA HUSSEIN, and SAFEYA HUSSEIN,  
Individually,

UNPUBLISHED  
May 7, 1999

Plaintiffs-Appellants,

v

AHMED GABASHA and KATIBA GABASHA,

No. 203650  
Wayne Circuit Court  
LC No. 96-621945 NO

Defendants-Appellees.

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Before: Saad, P.J., and Murphy and O'Connell, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(8) and (10) and dismissing their negligence claim. We affirm.

This Court reviews decisions on motions for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Motions under MCR 2.116(C)(8) test the legal sufficiency of the claim on the pleadings alone to determine whether the plaintiff has stated a claim on which relief may be granted. *Id.* The court must grant the motion if no factual development could justify the plaintiff's claim for relief. *Id.* Motions under MCR 2.116(C)(10) test the factual support of the plaintiff's claim. *Id.* The court considers the affidavits, pleadings, depositions, admissions, and other evidence submitted to determine whether a genuine issue of any material fact exists to warrant a trial. *Id.* Both this Court and the trial court must resolve all reasonable inferences in the nonmoving party's favor. *Bertrand v Allan Ford*, 449 Mich 606, 618; 537 NW2d 185 (1995).

To establish a prima facie case of negligence, plaintiffs must prove: (1) a duty owed by the defendants to the plaintiffs; (2) a breach of that duty; (3) causation; and (4) damages. *Schultz v Consumers Power Co*, 443 Mich 445, 449; 506 NW2d 175 (1993); *Swan v Wedgwood Christian Youth & Family Services, Inc*, 230 Mich App 190, 195; 583 NW2d 719 (1998). Duty can arise from a statute or a contract or by application of the basic rule of common law, which imposes an obligation to use due care or to act so as not to unreasonably endanger the person or property of others. *Riddle v McLouth Steel Products*, 440 Mich 85, 95; 485 NW2d 676 (1992). If factual

questions exist regarding what characteristics giving rise to a duty are present, the issue must be submitted to the factfinder. *Howe v Detroit Free Press, Inc*, 219 Mich App 150, 156; 555 NW2d 738 (1996).

Here, defendant lessors are statutorily obligated to keep their leased premises fit for the use intended by the parties and to keep the premises in reasonable repair. MCL 554.139(1); MSA 26.1109(1). As property owners, defendants owed a duty of care to their invitee tenants. *Holland v Liedel*, 197 Mich App 60, 62; 494 NW2d 772 (1992). However, that duty does not encompass maintaining window screens which are adequate to prevent children from falling through. We agree with the Illinois Supreme Court, which held that “as a matter of law, there is no duty on the part of a landlord to maintain in any window of an apartment he leases to tenants a screen sufficiently strong to support the weight of a tenant’s minor child leaning against the screen.” *Lamkin v Towner*, 138 Ill 2d 510, 519-520; 563 NE2d 449 (1990).<sup>1</sup>

Plaintiffs argue that this principle applies only where the landlord has properly maintained the screen. We disagree. If the law does not require landlords to provide screens that can support the weight of a child, there is no logical reason why it should matter that the screen was loose, or otherwise defective. Furthermore, the purpose of a screen is to allow ventilation while keeping out insects; not to prevent children from falling through windows. *Lamkin, supra* at 529. Therefore, any defect in the screen that precludes it from satisfying that purpose could not be a proximate cause for a child’s fall.

Affirmed.

/s/ Henry William Saad  
/s/ Peter D. O’Connell

I concur in result only.

/s/ William B. Murphy

<sup>1</sup> The trial court cited *DeBoer v Whispering Woods Limited Divided Housing Association*, unpublished opinion per curiam of the Court of Appeals, decided [January 24, 1997] (Docket No. 179987). Because unpublished opinions have no precedential value, MCR 7.215(C)(1), we review the trial court’s order independently of the *DeBoer* decision.